



JANUARY 13 - 19, 2006

New Count for Three-Strikes Law

D.A. Steve Cooley wants voters plan to revamp the inhumane measure

by JOE DOMANICK

The phone call from Los Angeles County District Attorney Steve Cooley last week came with an unexpected message: Reform of California's notorious three-strikes law was back in play. Cooley and attorney Brian T. Dunn, of Johnnie Cochran's law firm, had just jointly submitted "The Three Strikes Reform Act of 2006" to the Attorney General's Office, hoping to have it placed on the November ballot.

It was a strange turn of events for me. In 2004, I'd written a highly critical book about the state's three-strikes law, pointing out how it was accounting for 90 percent of the nation's three-strikes convictions and how it had sent more than 1,000 Californians to prison for 25-years-to-life for such crimes as attempting to buy a macadamia nut disguised as a \$5 rock of cocaine from an undercover cop, or shoplifting a \$2.49 packet of razor blades.

In the book I'd rightly praised Cooley for condemning such sentences back in 2000, when he'd successfully run against the incumbent D.A., Gil Garcetti, whose policies were resulting in 40 percent of the state's three-strikes convictions coming out of L.A. County.

Once in office, Cooley had changed the policy so that in most cases only "violent or serious" felonies would result in three-strikes prosecutions — and they dropped dramatically. I was thus incredulous later in 2004, when Cooley joined virtually the entire California criminal justice and political establishment in opposing Proposition 66, a far-reaching measure that would have brought a much-needed overhaul of the three-strikes law. When I accused him of being inconsistent, Cooley replied that he still favored reform, but that Proposition 66 had gone too far, and that he intended to work for more measured change. I respected Cooley, but wasn't holding my breath.

Then came his phone call. Last Friday I listened as he and his head deputy, Lael Rubin, explained their still-embryonic plans to amend three strikes and why they're pursuing reform. The "why" came up early in the conversation.

Cooley said that while he considered three strikes to be an "important prosecutorial tool," it had been applied unjustly for petty crimes, resulting in "the public losing faith in the system." Second, he feared a new version of Prop. 66 coming along and passing. From his point of view, Prop. 66 would have mandated the resentencing and release of far too many second- and third-strikers, and would have been far too restrictive in limiting what crime D.A.'s could pursue as a strike. "I think that when people stand back," said Rubin, "they'll realize that rather than face another Prop. 66 — which came very close to passing — they'll understand that if our proposal passes, that that kind of initiative would now be off the table." "Our motto," added Cooley, "is fix it or lose it."

As Cooley tells it, he'd been pushing for an alternative to the far more sweeping Prop. 66 for many months, working with San Francisco District Attorney Kamala D. Harris and San Francisco Assemblyman Mark Leno, but with little success.

Then Brian Dunn showed Cooley a new reform proposition that he'd just filed with the Attorney General's Office. After reading it, Cooley told Dunn he couldn't support it, for the same reasons he couldn't support Prop. 66. Cooley was particularly opposed to the elimination of residential burglary as a strike, because he considers it a very serious crime.

California is the only state in which the non-violent crime of residential burglary counts as a strike. In all others, only a violent crime can trigger a strike. The result is that many defendants have received third-strike sentences because of prior residential burglaries. As Cooley sees it, eliminating them as strikes would result in thousands of prisoners being resentenced, and far fewer people being eligible for future second- and third-strike sentences.

Cooley countered Dunn's proposal by showing him an Assembly bill that he, Harris and Leno had been working on. Dunn liked what he saw and, more importantly, understood that if he could unite with Cooley and others in law enforcement, he and his fellow reformers could actually win — if not the whole pie, then at least a decent slice.

They agreed to a proposal mandating that with certain exceptions, particularly burglary, only a "violent or serious" crime could be prosecuted as a strike; that the law would apply retroactively; and that all third-strikers serving time for a non-violent, non-serious crime would have to be resentenced, and with most released for time served.

Their current plan is to first ask the state Legislature to place the proposal on the ballot as a legislative initiative. If that fails, they'll begin the process of gathering the necessary signatures to place it on the ballot themselves, as well as the support of people like L.A. County Sheriff Lee Baca and Kamala Harris, who have already signed on.

The biggest stumbling block could be the California District Attorney's Association, a powerful lobbying group that spearheaded the opposition to Prop. 66. The original Dunn proposal is to be discussed at the district attorneys' mid-winter conference in Palm Springs. As of now, Cooley is uncertain how the organization will react. Getting Governor Schwarzenegger's support will also be important. It was his demagogic, last-minute television ads that were instrumental in dooming Prop. 66.

Should the Cooley-Dunn proposal pass in November, it will be no panacea. Thousands of non-violent men and women with three-strike sentences based on residential burglaries will still remain in prison for what amounts to the rest of their lives, costing taxpayers an average of \$500,000 to keep them there. But for over a thousand others, it will mean release from their long voyage into hell.

Copyright 2006 Los Angeles Weekly